Office-Supreme Court, U.S.
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JAMES R. BROWNING, Clerk

No. [redacted], 33

In the Supreme Court of the United States

October Term, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BRADEMAS IRON COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR CERTIORARI

J. LEE RANKIN,
Solicitor General, Department of Justice,
Washington 25, D.C.

DOMINICK L. MANOLI,
Assistant General Counsel,
STANLEY M. GREENFIELD,
Attorneys,
National Labor Relations Board,
Washington 25, D.C.

INDEX

	Page
Proceedings before the National Labor Relations Board:	
Complaint and notice of hearing	1
Settlement stipulation	6
Decision and order	13
Proceedings in the United States Court of Appeals for the Sixth Circuit:	
Decree	19
Notice of decree	21
Per curiam opinion on motion for reconsideration	22
Order denying motion for reconsideration	24
Order denying motion for reconsideration *en banc*	24

United States of America

National Labor Relations Board

Eighth Region

Case No. 8-CA-1905

BRANDMAN IRON COMPANY AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 20, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

COMPLAINT AND NOTICE OF HEARING

It having been charged by Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called the Charging Union) that Brandman Iron Company (hereinafter called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136 (herein called the Act), the General Counsel of the National Labor Relations Board (hereinafter called the Board), on behalf of the Board, by the undersigned Regional Director, issues this complaint and notice of hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 7, as amended.

1. The charge herein was filed by the Charging Union against the Respondent on June 4, 1959, service by registered mail being made upon Respondent on June 6, 1959.

2. Respondent is and has been at all times material herein a partnership, organized and existing by virtue of the laws of the State of Ohio, with its principal offices and place of business located in Findlay, Ohio, where it is engaged in the sale of steel and scrap rubber and metal.

3. Respondent, in the course and conduct of its business operations at its Findlay, Ohio, location, annually ships products valued in excess of $100,000 to non-retail business concerns within the State of Ohio, each of which in turn annually ships products valued in excess of $50,000 directly to points outside the State of Ohio.

4. Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Charging Union, Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

6(A). Respondent, through its officers, supervisors and agents, more particularly Peter Brandman, from on or about April 1, 1959, to date:

(a) Interrogated its employees concerning their union activities, sympathies, affiliation and membership, and threatened its employees with loss of employment, reduction in work hours, loss of benefits, and other reprisals because of such activities;

(b) Made promises of wage increases and other benefits to its employees if they should abandon and repudiate their activities, sympathies, affiliation and support of Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America, or any other labor organization;

(c) Threatened its employees with loss of employment and other reprisals if they should vote for the Charging Union or any other labor organization in an election conducted by the National Labor Relations Board;

(d) Made promises of wage increases and other benefits to its employees if they should vote against the Charging Union or any other labor organization in an election conducted by the National Labor Relations Board.

(B). Respondent, through its officers, supervisors and agents, more particularly Peter Brandman, from on or about April 17, 1959, to date, threatened its employees with loss of employment and other reprisals if they should give any statement, affidavit, testimony or evidence to agents of the National Labor Relations Board.

7. Respondent discharged employee Kenneth Patterson on or about May 18, 1959, employee Gilbert Salazar on or about May 19, 1959, and employee Manuel Ruiz on or about May 25, 1959.

8(A). Respondent, since on or about May 18, 1959, has failed and refused, and has continued to refuse to reinstate Kenneth Patterson to his former or substantially equivalent position or employment.

(B). Respondent, since on or about May 19, 1959, has failed and refused, and has continued to refuse to reinstate Gilbert Salazar to his former or substantially equivalent position or employment.

(C). Respondent, since on or about May 25, 1959, has failed and refused, and has continued to refuse to reinstate Manuel Ruiz to his former or substantially equivalent position or employment.

9. Respondent did discharge, and refused and failed to reinstate Kenneth Patterson, Gilbert Salazar and Manuel Ruiz for the reasons that:

(A). They had, or Respondent believed they had, joined, assisted or favored the Charging Union or engaged in other concerted activities for the purpose of collective bargaining and other mutual aid or protection, and

(B). They had, or Respondent believed they had, submitted statements, affidavits, testimony or evidence under the Act to an agent of the National Labor Relations Board.

10. By the acts described above in Paragraph 6 and the various sub-paragraphs thereof, and Paragraphs 7, 8 and 9 and the various sub-paragraphs thereof, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

11. By the acts described above in Paragraphs 7 and 8, for the reasons set forth in Paragraph 9 and sub-paragraph (A) thereof, Respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employees named above in Paragraph 7, thereby discouraging membership in the Charging Union, and Respondent did thereby engage in and is engaging in an unfair labor practice within the meaning of Section 8(a)(3) of the Act.

12. By the acts described above in Paragraphs 7 and 8, for the reasons set forth in Paragraph 9 and sub-paragraph (B) thereof, Respondent did discharge the employees named above in Paragraph 7 because

they had, or Respondent believed they had, given testimony under the Act, and Respondent did thereby engage in and is engaging in an unfair labor practice within the meaning of Section 8(a)(4) of the Act.

13. The activities of Respondent described above in Paragraphs 6, 7, 8 and 9, occurring in connection with the operations of Respondent described in Paragraphs 2, 3 and 4, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

14. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a) (1), (3) and (4) and Section 2 (6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 21st day of September, 1959, at 10:00 a.m. Eastern Standard Time, in the Third Floor Jury Room, Hancock County Court House, Findlay, Ohio, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed and issued by the Regional Director for the Eighth Region this 12th day of August, 1959.

(S) Philip Fusco,
PHILIP FUSCO,
Regional Director,
National Labor Relations Board, Eighth Region.

United States of America

National Labor Relations Board

Eighth Region

Case No. 8–CA–1905

BRANDMAN IRON COMPANY AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO 20, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

SETTLEMENT STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Brandman Iron Company, hereinafter called the Respondent, Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Charging Union, and the General Counsel of the National Labor Relations Board; that:

1. Upon a charge filed by the Charging Union on June 4, 1959, and served on the Respondent on June 6, 1959, receipt of which charge is hereby acknowledged by the Respondent, the General Counsel of the National Labor Relations Board, on behalf of the Na-

tional Labor Relations Board, hereinafter called the Board, by the Regional Director for the Eighth Region, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 61 Stat. 136, hereinafter called the Act, and Section 102.15 of the Board's Rules and Regulations, shall issue simultaneously with the execution of this Settlement Stipulation a Complaint and Notice of Hearing against the Respondent. Service by registered mail of true copies of said Complaint and Notice of Hearing is hereby acknowledged by the Respondent and the Charging Union.

2. The Respondent is and has been at all times material herein a partnership, organized and existing by virtue of the laws of the State of Ohio, with its principal offices and place of business located in Findlay, Ohio, where it is engaged in the sale of steel and scrap rubber and metal.

Respondent, in the course and conduct of its business operations at its Findlay, Ohio, place of business, annually ships products valued in excess of $100,000 to non-retail business concerns within the State of Ohio which in turn annually ship products valued in excess of $100,000 directly to points outside the State of Ohio. The Respondent admits that it is engaged in commerce within the meaning of Section 2, Subsections (6) and (7) of the Act.

3. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Charging Union, is a labor organization within the meaning of Section 2(5) of the Act.

4. All parties hereto waive the filing of answer, hearing, intermediate report of Trial Examiner, the filing of expections and briefs, oral argument before

the Board, the making of findings of fact or conclusions of law by the Board, and all further and other procedure to which the parties may be entitled under the Act or the Rules and Regulations of the Board.

5. This Stipulation together with the charge and Complaint and Notice of Hearing shall constitute the entire record herein.

6. Upon this Stipulation and the record herein as described in Paragraph 5 hereof, and without any further notice of proceedings herein, the Board may enter an order forthwith providing as follows:

The Respondent Brandman Iron Company, its officers, agents and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment because of membership or activity in any such labor organization;

(b) Interrogating its employees concerning their union activities, sympathies, or affiliation, and threatening its employees with loss of employment, reduction in work hours, loss of benefits, and other reprisals because of such activities;

(c) Making promises of wage increases and other benefits to its employees if they should abandon and repudiate their activities, sympathies, affiliation and support of Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America, or any other labor organization;

(d) Making promises of wage increases and other benefits to its employees if they should vote against the Charging Union or any other labor organization in an election conducted by the National Labor Relations Board; and

(e) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act:

(a) Offer to the following employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to them of the amounts set opposite their respective names:

Gilbert Salazar	$460.44
Manuel Ruiz	$774.50

Make Kenneth Patterson whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of the Sum of $469.51. The said Kenneth Patterson has declined an offer of reinstatement to his former position;

(b) Post immediately in conspicuous places throughout its Findlay, Ohio, place of business copies of the Notice to All Employees attached hereto and marked "Appendix A." Copies of the said notice to be furnished by the Regional Director for the Eighth Region shall, after being signed by the Respondent's representative, be posted immediately upon receipt thereof and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material;

(c) Notify the Regional Director for the Eighth Region in writing within 10 days from the date of this order, what steps the Respondent has taken to comply herewith.

7. All parties hereto agree that upon execution and approval of this Settlement Stipulation, Paragraph 6(B) of the Complaint alleging that Respondent, through its officers, supervisors and agents, more particularly Peter Brandman, from on or about April 17, 1959, to date, threatened its employees with loss of employment and other reprisals if they should give any statement, affidavit, testimony or evidence to agents of the National Labor Relations Board; and that Paragraph 9(B) of the Complaint alleging that the above-mentioned employees had, or Respondent believed they had, submitted statements, affidavits, testimony or evidence under the Act to an agent of the National Labor Relations Board; and that Paragraph 12 of the Complaint alleging that by the acts described in Paragraphs 7 and 8, for the reasons set forth in Paragraph 9 and Sub-paragraph (B) thereof, Respondent did discharge the employees named above

in Paragraph 7 because they had, or Respondent believed they had, given testimony under the Act, and Respondent did thereby engage in and is engaging in an unfair labor practice within the meaning of Section 8(a)(4) of the Act; and also that portion of Paragraph 14 of the Complaint alleging violation of 8(a)(4), may be dismissed by the Regional Director, Eighth Region, National Labor Relations Board, and it is hereby requested by all the parties hereto that such action be taken.

8. The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its decree enforcing the order of the Board in the form set forth in Paragraph 6 hereof. The Respondent waives all defenses to the entry of the decree, including compliance with the order of the Board, and its right to receive notice of the filing of an application for the entry of such decree, provided that the decree is in the words and figures set forth in Paragraph 6 hereof. However, the Respondent shall be required to comply with the affirmative provisions of the Board's order after entry of the decree only to the extent that it has not already done so.

9. This stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters or adds to it.

10. This stipulation, together with the other documents constituting the record as described in Paragraph 5 hereof, shall be filed with the Board. The stipulation is subject to the approval of the Board, and it shall be of no force and effect until the Board has granted such approval. Upon the Board's approval of the stipulation, the Respondent will im-

mediately comply with the provisions of the order as set forth in Paragraph 6 hereof.

Signed at Toledo, Ohio, October 28th, 1959.

BRANDMAN IRON COMPANY
By: (S) Richard S. Cole, *Attorney,*
1434 National Bank Bldg., Toledo, Ohio

Signed at Toledo, Ohio, October 28, 1959.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 20, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By: (S) Jack Gallon, *Attorney,*
435 S. Hawley St., Toledo, Ohio

Approval by the General Counsel recommended.

(S) John Kollar,
JOHN KOLLAR,
Attorney, Eighth Region, National Labor Relations Board, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland 15, Ohio

Date: October 28, 1959.

Approved:

GERALD P. LEICHT,
Office of the General Counsel, National Labor Relations Board, Washington 25, D.C.

Date: November 19, 1959.

APPENDIX A

Notice to All Employees

[Omitted in printing—identical to notice at pp. 17–19, *infra.*]

United States of America

Before the National Labor Relations Board

Case No. 8-CA-1905

BRANDMAN IRON COMPANY AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 20, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Statement of the case

On October 28, 1959, Brandman Iron Company, herein called the Respondent; Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Charging Union; and the General Counsel of the National Labor Relations Board, herein called the Board, entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which they may be entitled under the Act, and the Rules and Regulations of the Board, and Respondent waived its right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein, and the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the case, the Board makes the following:

Findings of fact

1. The business of the Respondent

The Respondent, a partnership, organized and existing by virtue of the laws of the State of Ohio, with its principal offices and place of business located in Findlay, Ohio, is engaged in the sale of steel and scrap rubber and metal.

In the course and conduct of its business operations at its Findlay, Ohio, place of business, Respondent annually ships products valued in excess of $100,000 to nonretail business concerns within the State of Ohio which in turn annually ship products valued in excess of $100,000 directly to points outside the State of Ohio. Respondent admits, and we find, that it is engaged in commerce within the meaning of the Act.

2. The labor organization involved

Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Upon the basis of the above findings of fact, the Settlement Stipulation and the entire record in the

case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

The Respondent Brandman Iron Company, its officers, agents and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminatin_ in regard to hire or tenure of employment or any other term or condition of employment because of membership or activity in any such labor organization;

(b) Interrogating its employees concerning their union activities, sympathies, or affiliation, and threatening its employees with loss of employment, reduction in work hours, loss of benefits, and other reprisals because of such activities;

(c) Making promises of wage increases and other benefits to its employees if they should abandon and repudiate their activities, sympathies, affiliation and support of Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organizations;

(d) Making promises of wage increases and other benefits to its employees if they should vote against the Charging Union or any other labor organization in an election conducted by the National Labor Relations Board; and

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the following employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to them of the amounts set opposite their respective names:

Gilbert Salazar	$460.44
Manuel Ruiz	$774.50

Make Kenneth Patterson whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of the sum of $469.51. The said Kenneth Patterson has declined an offer of reinstatement to his former position;

(b) Post immediately in conspicuous places throughout its Findlay, Ohio, place of business copies of the Notice to all Employees attached hereto and marked "Appendix A." Copies of the said notice to be furnished by the Regional Director for the Eighth Region shall, after being signed by the Respondent's

representative, be posted immediately upon receipt thereof and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material;

(c) Notify the Regional Director for the Eighth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply.

Dated, Washington, D.C., Jan. 7, 1960.

BOYD LEEDOM,
Chairman

STEPHEN S. BEAN,
Member

JOSEPH ALTON JENKINS,
Member

National Labor Relations Board

[SEAL]

APPENDIX A

Notice to all employees

PURSUANT TO a Decision and Order of the National Labor Relations Board, based upon a stipulation providing for a consent court decree in an appropriate circuit of the United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage our employees from membership in TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 20, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organi-

zation, by discriminatorily discharging any of our employees or in any other manner discriminate in regard to their hire or tenure of employment or any term or condition of their employment because of their membership or activity in the above-named Union or any other labor organization.

WE WILL NOT interrogate our employees concerning their union activities, sympathies, affiliation or membership.

WE WILL NOT threaten our employees with loss of employment, reduction in work hours or loss of other benefits because of their union activities, sympathies, affiliation or membership.

WE WILL NOT make promises of wage increases and other benefits to our employees for the purpose of causing them to abandon and repudiate their union activities, sympathies, affiliation and membership and vote against the above-named Union or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have

suffered by reason of the discrimination against them, by payment to them of the amounts set opposite their respective names;

Gilbert Salazar ---------- $460.44
Manuel Ruiz ---------- $774.50

WE WILL make Kenneth Patterson whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of the sum of $469.51. The said Kenneth Patterson has declined an offer of reinstatement to his former position.

All our employees are free to become or remain members of the above-named Union or any other labor organization.

BRANDMAN IRON COMPANY
(Employer)

Dated ---------- By ----------
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States Court of Appeals for the Sixth Circuit

14238

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BRANDMAN IRON COMPANY, RESPONDENT

Filed June 1, 1960, Carl W. Reuss, Clerk.
Before: MARTIN, CECIL and WEICK, Circuit Judges.

DECREE

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the en-

forcement of a certain order issued by it against the Respondent Brandman Iron Company, its officers, agents and assigns on January 7, 1960, in a proceeding before the said Board numbered 8–CA–1905; upon the transcript of the record in said proceeding, certified and filed in this Court, and upon a settlement stipulation providing for the entry of a consent decree of this Court enforcing the order as amended by the Court.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Sixth Circuit that the said order of the National Labor Relations Board be, and the same is hereby enforced, as amended, that Respondent Brandman Iron Company, its officers, agents and assigns abide by and perform the directions of the Board, in said order as amended contained.

(S) Paul C. Weick,
Judge, United States Court of Appeals
for the Sixth Circuit

Entry consented to this 29th day of April, 1960.
(S) Marcel Mallet-Prevost
MARCEL MALLET-PREVOST
Assistant General Counsel,
National Labor Relations Board

Entry consented to this day of
(S) Richard S. Cole
Counsel for Respondent

A true copy.
Teste:
(S) Carl W. Reuss, *Clerk, U.S. Court of Appeals*
for the Sixth Circuit
By: Mary M. McAfee,
D.C.

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CINCINNATI 2, OHIO, June 1, 1960

Carl W. Reuss, *Clerk*

NATIONAL LABOR RELATIONS BOARD,
Washington 25, D.C.

Re: National Labor Relations Board v. Brandman Iron Company, No. 14,238.

GENTLEMEN:

Enclosed is an attested copy of the consent decree which was amended by the Court and entered today in the above case. Copies of this amended decree have also been mailed to counsel.

We are returning to you herewith the certified record in this case and call your attention to the amendments that the Court has made in the Board's decision and order of January 7, 1960. These amendments consist in striking the words "or any other labor organization of its employees" where ever they appear in the Board's order. The Court feels that the Board's order was too broad since the only Union involved in the instant case is the Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 20.

Yours very truly,

CARL W. REUSS, *Clerk.*

(S) MARY M. MCAFEE, *Deputy Clerk.*

United States Court of Appeals for the Sixth Circuit

No. 14238

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BRANDMAN IRON COMPANY, RESPONDENT

ON MOTION FOR RECONSIDERATION

Decided August 15, 1960

Before: MARTIN, CECIL and WEICK, Circuit Judges.

PER CURIAM. The Court, sua sponte, struck from the Order of the Board sought to be enforced, the language "or any other labor organization."

We are asked to reconsider our ruling. It is pointed out that the Order of the Board was consented to by the respondent who also stipulated that the decree could be entered thereon by this Court. Also that the complaint filed before the Board contained the language "or any other labor organization." No evidence was offered either before the Board or the Court.

The only union involved before the Board was Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 20. No other union had filed a complaint against the employer.

A somewhat similar question is involved in another case pending in this Court, namely, *National Labor Relations Board* v. *Murray Ohio Manufacturing Co.*, No. 14,175, which leads us to believe that the practice of entering so-called "broad" orders is not at all uncommon.

In striking out the language we believed objectionable, we acted on the authority of *Communication Workers of America* v. *N.L.R.B.*, 362 U.S. 479. Cf.

N.L.R.B. v. *Local 926, International Union of Operating Engineers,* 267 F. 2d 418 (C.A. 5).

While the *Communication Workers* case involved the language "or any other employer" and the present case "or any other labor union," we think this is a distinction without a difference. If it should become necessary to enforce the Court's order by contempt proceedings, the question may very well be presented as to the power of the Board or the Court to enter orders protecting unions or employers who were not parties to the proceedings.

Even though no objection was made to the decree, as we see it there is a duty on the Court to carefully examine all decrees submitted and to fashion them, if necessary, in accordance with accepted legal standards. The Court is under no mandatory requirement to enter a decree in whatever form it may be presented because the parties have consented. See concurring opinion of Justice Stone in *N.L.R.B.* v. *Cheney Lumber Co.,* 327 U.S. 385, 389–391; *Hecht* v. *Bowles,* 321 U.S. 321.

The motion for reconsideration is denied.

CECIL, Circuit Judge, dissents. I would sustain the motion on the authority of *N.L.R.B.* v. *Cheney California Lumber Co.,* 327 U.S. 385.

United States Court of Appeals for the Sixth Circuit

No. 14,238

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BRANDMAN IRON COMPANY, RESPONDENT

ORDER

Filed Aug. 15, 1960, Carl W. Reuss, *Clerk.*

Before: MARTIN, CECIL and WEICK, Circuit Judges.

IT IS ORDERED that the motion for reconsideration filed by the National Labor Relations Board be and it is denied. Judge Cecil dissents.

Approved for entry:

(s) Paul C. Weick,
United States Circuit Judge.

A true copy.
Attest: CARL W. REUSS, *Clerk.*
by MARY M. MCAFEE, *Deputy Clerk.*

ORDER ON MOTION FOR RECONSIDERATION EN BANC

Before: MARTIN, CECIL and WEICK, Circuit Judges.

The Motion of the National Labor Relations Board that the Court Reconsider En banc its order issued on August 15, 1960 is hereby denied.

Approved for entry:

(s) Paul C. Weick,
United States Circuit Judge.

Filed Sept. 23, 1960, CARL W. REUSS, *Clerk.*

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